

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #2	CCRB Case #: 201501952	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/17/2015 2:30 PM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 9/17/2016	EO SOL 9/17/2016	
Date/Time CV Reported Wed, 03/18/2015 9:33 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/18/2015 9:33 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Frankie Hernandez	15838	940254	042 DET
2. DT3 Andrew Rodriguez	02878	937401	042 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Andrew Rodriguez	Abuse: Det. Andrew Rodriguez threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.DT3 Andrew Rodriguez	Force: Det. Andrew Rodriguez used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Frankie Hernandez	Abuse: PO Frankie Hernandez entered and searched § 87(2)(b)	§ 87(2)(b)
D.DT3 Andrew Rodriguez	Abuse: Det. Andrew Rodriguez entered and searched § 87(2)(b)	§ 87(2)(b)

Case Summary

On March 17, 2015, at approximately 2:30 p.m., Det. Andrew Rodriguez and PO Frankie Hernandez of the 42nd Precinct Detective Squad went to § 87(2)(b) in the Bronx as part of an investigation into a stolen cell phone. § 87(2)(b) answered the door. The officers asked § 87(2)(b) if her son § 87(2)(b) was home. § 87(2)(b) confirmed that he was and the officers saw § 87(2)(b) inside the apartment. Det. Rodriguez allegedly told § 87(2)(b) “If you don’t move out of the way, I’m going to arrest you too.” (**Allegation A**) § 87(2)(b) was holding the door with her left hand. Det. Rodriguez allegedly grabbed § 87(2)(b) s left wrist and “flung” her arm aside, and pushed the door open with his body (**Allegation B**). PO Hernandez and Detective Rodriguez both entered the apartment (**Allegation C and D**). The officers walked directly to § 87(2)(b) who was in the living room and handcuffed him. They then immediately escorted him out of the apartment and transported him to the 42nd Precinct stationhouse. § 87(2)(b) was charged with § 87(2)(b) and released with a Desk Appearance Ticket.

Mediation, Civil and Criminal Histories

§ 87(2)(b) declined to mediate this complaint. As of August 14, 2015, there has been no notice of claim filed by § 87(2)(b) or § 87(2)(b) with the City of New York regarding this incident (**BR9**). According to the BADS database, § 87(2)(b) has no criminal history in the City of New York. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by either § 87(2)(b) or § 87(2)(b) **BR2** and **BR3**).
- In his ten year tenure in the NYPD, Det. Rodriguez has had two previous CCRB complaints against him, involving three allegations, none of which were substantiated.
- In his nine year tenure in the NYPD, PO Hernandez has had two previous CCRB complaints against him, involving two allegations, neither of which was substantiated. In CCRB case number 200815627, an allegation of physical force was unsubstantiated.

Finding and Recommendations

Explanation of Subject Officer Identification

Det. Rodriguez and PO Hernandez are both Hispanic males of similar build and height. Their distinguishing feature is that Det. Rodriguez is bald while PO Hernandez has black hair. § 87(2)(b) was given a business card with Det. Rodriguez and PO Hernandez’s names on it. In her CCRB statement (**BR4**), § 87(2)(b) stated that the officer who threatened to arrest her and grabbed her arm was the bald officer, but incorrectly believed that this was PO Hernandez, who is not bald. She also stated that the officer with black hair provided her with the business card but incorrectly recalled that this was Det. Rodriguez, who is bald. Both officers were consistent that PO Hernandez was the one who provided the business card and wrote the names down.

§ 87(2)(g)

Allegation A – Abuse of Authority: Det. Andrew Rodriguez threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that when she asked both PO Hernandez and Det. Rodriguez whether they had a warrant, both officers replied they did not. § 87(2)(b) told both officers that they could not enter the apartment without a warrant. Det. Rodriguez asked her, “Well is your son home?” § 87(2)(b) replied that he was. Det. Rodriguez then allegedly said to § 87(2)(b) “If you don’t move out the way. I’m going to arrest you too.” (BR4) § 87(2)(b) described a similar series of events, but recalled that § 87(2)(b) was told, “Your son is under arrest. Do you want to get arrested too?” (BR5) Det. Rodriguez claimed that § 87(2)(b) put herself between the officers and § 87(2)(b) in order to prevent them from arresting him. He also claimed that she placed a hand against his chest. Det. Rodriguez stated that § 87(2)(b) was informed that if she continued to interfere with attempts to arrest her son, she could be arrested for Obstruction of Governmental Administration, but he did not recall whether he or PO Hernandez said this (BR6).

The relevant portions of Penal Law 195.05 state: “A person is guilty of obstruction of governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or by means of any independently unlawful act...” (See Board Review Legal Reference) Absent exigent circumstances, the Fourth Amendment prohibits the police from making a warrantless and nonconsensual entry into a suspect’s home in order to make a routine felony arrest. Payton v. New York, 445 US 573 (1980) (See Board Review Legal Reference). In order to support a charge of Obstruction of Governmental Administration, it must be alleged that the defendant interfered with an authorized arrest. Interference in an unauthorized arrest taking place during an unlawful entry into a home is not sufficient to allege that a defendant violated penal law. People v. Briggs 890 N.Y.S. 2d370 (2009) (See Board Review Legal Reference)

§ 87(2)(g)

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Allegation B – Force: Det. Andrew Rodriguez used physical force against § 87(2)(b)

§ 87(2)(b) stated that she stood in front of her doorway with her left hand on the door. She alleged that Det. Rodriguez grabbed her left wrist and flung her arm aside, causing pain to her arm (BR4). § 87(2)(b) stated that § 87(2)(b) was pushed aside with one arm (BR5). § 87(2)(b) did not receive any injuries or obtain medical treatment. Det. Rodriguez stated that when he entered the apartment, § 87(2)(b) put her hand on his chest, but he reacted by stepping aside and walking past her. He denied pushing § 87(2)(b) (BR6).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Frankie Hernandez entered and searched § 87(2)(b) in the Bronx.

Allegation D – Abuse of Authority: Det. Andrew Rodriguez entered and searched § 87(2)(b) in the Bronx.

On § 87(2)(b), a home burglary occurred, during which a cell phone was taken by unidentified suspects. Det. Rodriguez was assigned to investigate that crime. According to Det. Rodriguez's investigation worksheets (BR7), on March 16, 2015, Det. Rodriguez identified two individuals that accessed the cell phone after it was stolen. § 87(2)(b) was one of the individuals. The next day Det. Rodriguez and PO Hernandez went to § 87(2)(b)'s apartment. They knocked on the door and § 87(2)(b)'s mother § 87(2)(b) answered. It is undisputed that the officers saw § 87(2)(b) inside the apartment from the open apartment door. The officers told § 87(2)(b) they were investigating a stolen cell phone. § 87(2)(b) stated that she stood in the doorway holding onto the door. She asked the officers whether they had any warrants and they replied that they did not. § 87(2)(b) said to them, "You can't enter my apartment. You don't have a warrant for my son's arrest." (BR4) As noted above, § 87(2)(b) claimed that Det. Rodriguez threatened to arrest her and forcibly grabbing her wrist, then both officers entered her living room and handcuffed § 87(2)(b).

PO Hernandez and Det. Rodriguez both admitted to entering § 87(2)(b) without a warrant. Det. Rodriguez stated that by subpoenaing the telephone company, he obtained evidence that § 87(2)(b) logged onto the stolen cell phone after it was stolen. Det. Rodriguez believed this gave him probable cause to arrest § 87(2)(b) and that he went to the apartment with that purpose in mind, but he did not obtain a search warrant or an arrest warrant. Det. Rodriguez believed there were exigent circumstances to enter the apartment because he had probable cause to arrest § 87(2)(b) he knew § 87(2)(b) was inside the apartment, § 87(2)(b) could have retrieved a weapon or destroyed evidence inside the apartment and the apartment was on the first floor presenting a risk of escape (BR6). PO Hernandez stated that he was assisting Det. Rodriguez in his investigation and therefore did not know how Det. Rodriguez identified § 87(2)(b) as a suspect nor how § 87(2)(b)'s address was obtained. PO Hernandez stated that § 87(2)(b) gave consent for officers to enter the apartment simply by the fact that she did not stop them. However, he also stated earlier in the incident that she was "not cooperating" with the officers and had said to them, "Nope, he's not going anywhere." (BR8)

Warrantless entries into a home to make an arrest are presumptively unconstitutional. Exceptions to this rule include consent, hot pursuit, exigent circumstances and emergency situations. In determining whether exigent circumstances are present, courts have applied a six part test: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry." The factors are not meant to be exhaustive or definitive, and ultimately, it must be determined whether in light of all the facts of the particular case there was an urgent need that justifies a warrantless entry. People v. McBride, 14 N.Y.3d 440 (2010). (See Board Review Legal Reference)

§ 87(2)(g)

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§ 87(2)(g)

Squad: 2

Investigator: _____ Simon Wang _____
Signature Print Date

Supervisor: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date